



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/167882

PRELIMINARY RECITALS

Pursuant to a petition filed August 7, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General in regard to FoodShare benefits (FS), a hearing was held on September 16, 2015, by telephone.

The issue for determination is whether the agency correctly imposed an Intentional Program Violation (IPV) sanction.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] (not participating)
[REDACTED]
[REDACTED]

Petitioner's Representative:

Attorney [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] trafficking agent
Office of the Inspector General
Department of Health Services
1 West Wilson Street
Madison, WI 53701

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Wisconsin.

2. After a trial on April 29, 2015, petitioner was found guilty on violating Brown County ordinance 30.05(2), "Interfering with Proper Administration of Public Benefits", a subsection of the ordinance entitled "Prohibiting Fraud In Public Assistance." The charging document issued to petitioner informed her that a conviction would result in a one-year bar from receiving FS for a first violation. *See*, OIG Exhibits 1, 2.
3. Evidence brought forth in the Brown County case was that a store named Green Bay [REDACTED] [REDACTED] was trafficking FS by allowing recipients to use FS to pay off debts in exchange for FS. The store was shown to have virtually no stock.
4. Transactions showed up in the Halal store's ledger as being repayments for debt. Petitioner made unauthorized FS transactions with [REDACTED] on the following dates:

May 11, 2011 - \$ 94.96

June 9, 2011 - \$170.95

August 9, 2011 - \$ 86.58

December 9, 2011 - \$73.53

See, Exhibit 3F.
5. Petitioner had no prior program violations. Following the guilty verdict the state FS agency imposed a one-year bar on petitioner receiving FS. The Department issued written notice of the FS case closure for one year to the petitioner on May 14, 2015.

DISCUSSION

7 C.F.R. §273.16(b) provides as follows:

(1) Individuals found to have committed an intentional Program violation either through an administrative disqualification hearing or by a Federal, State or local court, or who have signed either a waiver of right to an administrative disqualification hearing or a disqualification consent agreement in cases referred for prosecution, shall be ineligible to participate in the Program:

(i) For a period of twelve months for the first intentional Program violation....

Similarly, the Department's FS Handbook, §3.14.1, provides:

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

The definition of an IPV is found at 7 C.F.R. §273.16(c):

Intentional Program violations shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts;
or

(2) Committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device).

The definition of “trafficking” includes the following at 7 C.F.R. §271.2: “(1) The buying, selling, stealing, or otherwise effecting an exchange of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone.”

Ms. [REDACTED] testified at the Brown County proceeding, and in the fair hearing explained the procedure for determining which benefits were considered to be trafficked (purchases from a store that had virtually no stock, and paying off debts with FS as evidenced by the store’s debt ledgers). The Department’s theory is that the petitioner engaged in trafficking. The sanction is only against the individual found guilty. Other family members remain eligible for FS.

Petitioner did not testify in this fair hearing.

The issue is whether the Brown County judgment of a violation of the welfare fraud ordinance is sufficient to impose a one-year sanction. I conclude that it is sufficient. The federal regulation provides that a sanction can be imposed based upon the judgment of a local court. The charge against petitioner was that she intentionally violated FS rules in the use of her card. The definition of a program violation is that the person committed *any act* that violates program regulations in using, presenting, transferring, acquiring, receiving, or trafficking FS. The guilty verdict by a Brown County judge following a trial is sufficient to meet that standard.

I cannot make a judgment on how the circuit court trial was conducted. Petitioner was found guilty, and under the FS regulations a one-year sanction can be imposed.

This Decision is consistent with a prior decision involving Green Bay [REDACTED] and a different petitioner, written by Judge Schneider of this office. *See*, DHA Decision No. FOP/167943 (Wis. Div. of Hearings & Appeals, September 2015)(DHS).

CONCLUSIONS OF LAW

1. The OIG correctly imposed a one-year FS sanction against petitioner following a Brown County court judgment that he violated an FS fraud ordinance.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 6th day of October, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 6, 2015.

Office of the Inspector General
Division of Health Care Access and Accountability
Attorney [REDACTED]